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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1947

No. 586

TURLOCK IRRIGATION DISTRICT (a public corporation), and MODESTO IRRIGATION DISTRICT (a public corporation),
Petitioners,

vs.

COUNTY OF TUOLUMNE, BOARD OF SUPERVISORS OF THE COUNTY OF TUOLOMNE, MARGARET C. MOYLE, as County Assessor of the County of Tuolumne, JAMES G. WHITE, as Auditor of the County of Tuolumne, T. R. VILAS, as District Attorney of the County of Tuolumne, and STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA,
Respondents.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the State of California
and
BRIEF IN SUPPORT THEREOF.

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Respondents.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the State of California.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment (R. 20)[1] of the Supreme Court of the State of California made in the above entitled cause on November 17, 1947, which denied the petition of the above named petitioners for a writ of mandamus (R. 1) which decision became final December 17, 1947 (Rule 24 of "Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California").[2]

OPINION BELOW.

The decision of the Supreme Court of the State of California in this case was entered without opinion. The decision was in bank, two justices voting for issuance of the writ (R. 20).

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a proceeding for a writ of mandamus brought by the petitioners who are California irriga-

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[1]References are to the printed Transcript of Record.

[2]Rule 24. Decision on Appeal.

"(a) (When decisions become final.) All decisions of the reviewing courts shall be filed with the clerk. A decision of the Supreme Court becomes final 30 days after filing unless otherwise ordered prior to the expiration of said 30-day period." See also Article VI, Sections 2, 4c, California Constitution.

tion districts and public corporations and state governmental agencies organized June 6, 1887 and July 23, 1887, respectively under the provisions of the Wright Act, California Stats. 1887, p. 29 as amended, being presently Division 11, Water Code of California, California Stats. 1943, Chapter 368 as amended. The proceeding relates to taxation by the County of Tuolumne, a California county, of certain properties owned by the irrigation districts in which they have a common interest. The petition for writ of mandamus was directed against the County of Tuolumne, its Board of Supervisors, Assessor, Tax Collector, Auditor and District Attorney, and against the State Board of Equalization of the State of California.[3] (The State Board of Equalization has some administrative duties in connection with equalization of the assessments levied by counties for tax purposes). The petition was denied by the California Supreme Court (R. 20).

Petitioners in 1921 in the case of *Turlock Irrigation District v. White,* 186 Cal. 183, 198 Pac. 1060, obtained a final judgment in the Supreme Court of California determining that its said property in Tuolumne County is immune from taxation by the County of Tuolumne under the provisions of California Constitution, Article XIII, Section 1. There has been no revision of this constitutional provision since the decision in the 1921 case, yet the California Supreme Court says in the instant case that it had no such immunity.

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[3]Respondents.

The two districts[4] have respectively areas of 181,498 acres and 81,183 acres and adjoin (R. 1, 2). The Turlock Irrigation District lies within the counties of Stanislaus and Merced in the State of California and the Modesto Irrigation District lies entirely within the County of Stanislaus. Tuolumne County is an adjoining county to Stanislaus County.

The districts in the year 1912 (R. 2), acquired the real property in question for the uses and purposes set forth in Section 29 of the California Irrigation District Act.[5] (Stat. Cal. 1897, p. 254).

The districts constructed upon this real property a dam known as Don Pedro Dam and Reservoir, and other facilities for the purpose of impounding water for irrigating the lands within the boundaries of the districts, and generating electric power which is largely distributed by the districts. Construction of the works was completed in 1923 and the property has been continuously used for that public purpose. (R. 2).

In the year 1918, the County of Tuolumne attempted to and did levy an assessment upon this property and at that time the petitioner Turlock Irrigation District, on its own behalf and on behalf of the Modesto Irrigation District brought an action

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[4]The petitioners herein will sometimes be referred to as the "districts" for convenience.

[5]This is now Sec. 22437 of the Water Code of the State of California, and provides:

"The title to all property acquired by a district is held in trust for its uses and purposes. The district may hold, use, acquire, manage, sell, or lease the property as provided in this division."

in the Superior Court of the State of California in and for the County of Tuolumne against the officials of that county for an injunction to permanently enjoin and restrain the officers of Tuolumne County from proceeding with the assessment and selling the property pursuant thereto (R. 3). The Court in that action permanently enjoined the County of Tuolumne and its officers from taxing the property. An appeal was taken by the County of Tuolumne from this decision and the Supreme Court of the State of California affirmed the decision and rendered its decision thereon, reported in the said case of *Turlock Irrigation District v. White,* 186 Cal. 183, 198 Pac. 1060 (R. 4). The remittitur of the California Supreme Court went down when this decision became final in 1921, whereupon the judgment of permanent injunction was affirmed (R. 4).

Nevertheless, and despite the judgment in the *Turlock Irrigation District v. White* case, the Tuolumne County officials assessed the property of the districts in Tuolumne County in the amount of $275,275 on March 3, 1947, and on August 20, 1947, the State Board of Equalization approved the amount of the assessment (R. 3). On August 31, 1947, the Board of Supervisors of the County of Tuolumne levied taxes upon this real property in the amount of $8,775.51 (R. 3).

The answer of the respondents below admitted the facts but relied on the case of *Rock Creek Water District v. County of Calaveras,* 29 Cal. (2d) 1, 172 P. (2d) 863 (R. 17). Petitioners were not parties to the

Rock Creek case. The decision in this later case (1946), involved a water district organized under a different statute than the one relating to the organization of irrigation districts, and the Court in a sweeping decision, by dictum attempted to overrule the *Turlock Irrigation District v. White* case. It was in apparent reliance upon this language that the Tuolumne County officials after nearly 30 years again made a levy of county taxes upon the properties of the petitioners, which are state agencies.

By the decision in the *Turlock Irrigation District v. White* case, it was determined that the officers of the County of Tuolumne are powerless to levy an assessment upon the lands and properties of these districts and that there is no power under the laws of the State of California to levy an assessment for county tax purposes upon such land, and it was contended by the districts below and is contended that the question of the power to levy this tax became *res judicata* and that the attempt to levy such a tax in 1947, more than 26 years after the former judgment became final invades the contractual and property rights of the petitioners, its landowners and taxpayers herein under the Constitution of the United States. It was and is contended that the decision in the *Turlock Irrigation District v. White* case became and effected a rule of property and became a grant and a contract conveying the right of immunity from such assessment. In reliance upon this cont[illegible]nd grant, the districts acquired properties of an [illegible]sive nature and made financial and property com[illegible]itments and undertook financial obligations (R. 4).

The districts, petitioners herein, are public corporations of the State of California and are governmental agencies and are not mere municipal corporations as that term is used in the California Constitution, Article XIII, Section 1. These public agencies are incorporated as legislative governmental agencies of the State of California.[6] They were formed under the provisions of the "Wright Act" referred to and are now constituted public agencies under the provisions of the Water Code, supra. They are formed by the petition of the landowners in the area involved. These petitions are presented to the Board of Supervisors of the county and after public hearings and a report on the feasibility of the project by the state and a public election, the districts are formed.[7] Thus while they are public governmental agencies they become public trustees of the property for the public and the State of California. But they have other functions. They are trustees for the bondholders whose bonds are issued pursuant to the provisions of the Water Code of the State of California, Sections 25200 to 25219 and it is their duty to protect the security granted such bondholders. This security is by taxation against the land of the district.[8] The

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[6]See citations in brief.

[7]The pertinent sections of the Water Code are set forth in Exhibit A, appended.

[8]Sec. 25219, Water Code of the State of California:

"Unless otherwise provided in the proceedings for the issuance of the bonds, they and the interest on them shall be paid from money derived from an annual assessment upon land or charges which in the discretion of the board are fixed and collected in lieu thereof and all land shall be and remain liable to be assessed for these payments."

districts are also trustees for the landowners within the boundaries of the districts.[9]

The denial of the writ of mandamus sought in this case below thus finally affects the property interests not only of this public agency but of the bondholders, taxpayers and landowners for whom petitioners act. In some sense it may be said that an irrigation district is an incorporation of the landowners in the area for a public purpose, but some of these purposes vitally affect the individual interests of the landowners and the assessment of the tax by the County of Tuolumne upon these lands places additional burdens upon the landowners within the irrigation districts and lessens the security of the bondholders with whom the petitioners have contracts.

The judgment in the mandamus proceeding was a final judgment within the meaning of the Judicial Code and thus subject to review. (See authorities in brief).

The petition for writ of mandamus sought to compel the auditor of the county, the Board of Supervisors and the District Attorney pursuant to Section 4986 of the Revenue and Taxation Code of the State of California to cancel taxes levied against the real property of the districts[10] (R. 5, 16).

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[9]Authorities in brief appended.

[10]Section 4986 of the Revenue and Taxation Code of the State of California reads in part:

"All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors

JURISDICTION.

The decision of the Supreme Court of the State of California was rendered November 17, 1947. It became final December 17, 1947 (Rule 24 of "Rules on Appeal for the Supreme Court and District Courts of Appeal of the State of California"). The jurisdiction of this Court is invoked under the provisions of Judicial Code, Section 237 (b), amended, 28 U.S.C.A., Section 344 (b).

The final decision of the California Supreme Court denied to the petitioners a contractual right and right to property which they had obtained under the final decision of the same Court in the case of *Turlock Irrigation District v. White,* 186 Cal. 183, 198 P. 1060, and was an invasion of the property and contractual rights of the parties without due process contrary to the provisions of the Fourteenth Amendment, Section 1 of the Constitution of the United States. This question was specially set up and claimed in the petition to the California Supreme Court (R. 4, 5, 12).[11]

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with the written consent of the district attorney if it was levied or charged:

* * * * *

(b) Erroneously or illegally.

* * * * *"

[11]As the Court below did not give any reason for its order denying the writ, it must be presumed that it held adversely to petitioners on the federal question presented, since the judgment as rendered could not have been given without so deciding.

STATUTES INVOLVED.

The statutes which are involved in a full consideration of the decision are California Constitution, Article XIII, Section 1, reading as follows:

> "All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; and further provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county, or municipal corporation within this state shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county, or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation; provided, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to taxation. All lands or improvements

thereon, belonging to any county, city and county, or municipal corporation, not exempt from taxation, shall be assessed by the assessor of the county, city and county, or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and adjustment by the state board of equalization. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state."

And also Section 4986 of the Revenue and Taxation Code of the State of California, reading as follows:

"All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the district attorney if it was levied or charged:

(a) More than once.

(b) Erroneously or illegally.

(c) On a portion of an assessment in excess of the cash value of the property by reason of the assessor's clerical error.

(d) On improvements when the improvements did not exist on the lien date.

(e) On property acquired after the lien date by the State or by any county, city, school district or other political subdivision and because of this public ownership not subject to sale for delinquent taxes.

(f) On property acquired after the lien date by the United States of America if such prop-

erty upon such acquisition becomes exempt from taxation under the laws of the United States.

'Property acquired' as used in this section shall include street easements and shall also include other easements for public use where the residual estate remaining in private ownership has a nominal value only.

No cancellation under subparagraphs (b), (e) or (f) of this section shall be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a municipal corporation without the written consent of the city attorney thereof."

QUESTIONS PRESENTED.

Where a California irrigation district, a public agency and trustee for the landowners, taxpayers and citizens thereof and for the holders of its public bonds owns real property as to which the highest Court of the state has determined in a judgment which has become final that the particular lands in question are not subject to taxation by a county of the State of California, and in so doing places this construction upon a provision of the California Constitution, is not a second decision 26 years later by the same Court (the decision of the Court below in this cause) reversing the former decision, a denial of due process and a taking of contractual and property rights contrary to the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States, where there has been no legislative change in the Constitution?

REASONS FOR GRANTING WRIT OF CERTIORARI.

1. The California Supreme Court in the case of *Turlock Irrigation District v. White* (supra), specifically affirmed the issuance of an injunction against the officers of the County of Tuolumne enjoining them from levying any tax whatever upon the properties of the irrigation district in their county and held that the Turlock Irrigation District was not a "municipal corporation" as that term is used in Section 1 of Article XIII of the California Constitution. In a subsequent decision in a case in which petitioners were not parties,[12] involving not an irrigation district but a water district of the State of California organized under a different statute[13] the Supreme Court of California had held without direct attack upon the *Turlock* case that the property of the water district was subject to taxation by the county. This was a reinterpretation of Section 1 of Article XIII of the Constitution of the State of California and the California Supreme Court in the case in question[14] attempted to overrule the *Turlock Irrigation District v. White* case. It is evident that in denying the petition for writ of mandamus in the instant case the California Supreme Court relied upon the *Rock Creek* case, but it is the contention of the petitioners that a writ of certiorari should be granted because it has been repeatedly determined by this Court, as we will show in our brief below that it takes a legislative

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[12] *Rock Creek Water District v. County of Calaveras*, infra, footnote 14.

[13] California Water District Act, Cal. Stat. 1913, p. 815.

[14] *Rock Creek Water District v. County of Calaveras*, 29 Cal. (2d) 1, 172 P. (2d) 863.

enactment of the state to void the rule of *res judicata.* Reliance upon the *Rock Creek* case is itself denial of due process. It seems to petitioners a strange thing that a decision which they have obtained and which is final by the highest Court of the state can be set aside in a subsequent case by the same Court in reliance upon a decision in another case (the *Rock Creek* case), in which petitioners make no appearance and were not heard, and which does not affect either them or the property involved. This matter having been once adjudicated became a property right and right of contract, and to take away this right is a violation of the due process provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States. This federal question was placed before the California Supreme Court in the instant case and overruled (R. 4, 5).

2. The irrigation district is not only a legal entity, but it is in a real sense a trustee for the landowners and taxpayers and citizens thereof and for its bondholders. As such it acquired for these parties property and contract rights in and by virtue of the judgment in the *Turlock Irrigation District v. White* case. These rights are wrongfully taken by the decision below, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Supreme Court of the State of California to certify and send to this Court for its review and determination a full and complete tran-

script of the record of the proceedings in said Court in the case numbered and entitled in its docket as Sac. No. 5899, Turlock Irrigation District, a public corporation, and Modesto Irrigation District, a public corporation, petitioners v. County of Tuolumne, Board of Supervisors of the County of Tuolumne, Margaret C. Moyle, as County Assessor of the County of Tuolumne, James G. White, as Auditor of the County of Tuolumne, T. R. Vilas, as District Attorney of the County of Tuolumne, and State Board of Equalization of the State of California, respondents, and that the judgment of said Court be reversed, and said Court by this Court directed to grant the application for writ of mandamus and for such other relief as to this Court may seem proper.

Dated, February 6, 1948.

TURLOCK IRRIGATION DISTRICT,
By R. S. TILLNER, *Secretary*,
MODESTO IRRIGATION DISTRICT,
By L. E. BITHER, *Secretary*,
Petitioners.

W. COBURN COOK,
Counsel for Petitioners.

VERNON F. GANT,
Of Counsel.

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Respondents.

BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI.

OPINION IN THE COURT BELOW.

There was no opinion filed by the Court. Two of the judges of the Supreme Court voted in favor of granting the writ (R. 20).

STATEMENT OF THE CASE.

A statement of the case has already been made in the Petition for Writ of Certiorari, under the heading Summary Statement of the Matter Involved, and this statement is referred to to avoid repetition.

JURISDICTION.

The matter of jurisdiction has been covered in the petition for writ of certiorari and will not be here repeated.

ARGUMENT.

FIRST POINT: THE JUDGMENT OF THE CALIFORNIA SUPREME COURT IN THE INSTANT CASE WAS A FINAL JUDGMENT.

A proceeding in mandamus is an independent adversary suit and a judgment awarding or refusing the writ is a final judgment within the meaning of the Federal Judicial Code. *Detroit & M. R. Co. v. Michigan R. Commission,* 240 U. S. 564, 36 S. Ct. 424.

It was held in *Hartman v. Greenhow,* 102 U. S. 672 (26 L. Ed. 271), that a denial of a writ of mandamus is a final judgment. In that case the plaintiff had ap-

plied to the Supreme Court of Appeals of Virginia for a writ of mandamus to the treasurer of that state to compel him to receive certain coupons in full discharge of the petitioner's taxes without any deduction from the coupons for the taxes upon the bonds. On a writ of review addressed to the Supreme Court the questions involved were fully reviewed. In its decision the court says:

> "A mandamus in cases of this kind is no longer regarded in this country as a mere prerogative writ. It is nothing more than an ordinary proceeding or action in which the performance of a specific duty, by which the rights of the petitioner are affected, is sought to be enforced."

SECOND POINT: THE WRIT OF MANDAMUS SHOULD HAVE BEEN ISSUED TO REQUIRE THE OFFICERS OF THE COUNTY TO CORRECT THEIR TAX ROLL.

The writ of mandate has been used in numerous instances for the purpose of controlling matters of taxation (16 *Cal. Jur.* p. 789; 7 *Cal. Jur.*, p. 806 (10 year Supplement); 24 *Cal. Jur.* 149).

In 34 *Am. Jur.* at page 985 it is stated:

> "It has been held that mandamus will lie to compel assessors to strike from the assessment roll untaxable property they have included in it, because their proceedings in such a case are clearly in excess of their jurisdiction. Under such circumstances, nothing is submitted to their discretion, the subject of the controversy is put, by the law, beyond their authority, and they can lawfully neither list it nor value it. So where

an assessment is illegally increased by tax commissioners and approved by a board of supervisors mandamus will lie to compel the supervisors to reduce the assessment to the amount fixed by the assessors."

California law provides this procedure for correcting such error:

Section 4986 of the Revenue and Taxation Code provides:

"All or any portion of any uncollected tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the district attorney if it was levied or charged:

"(b) Erroneously or illegally."

THIRD POINT: A CALIFORNIA IRRIGATION DISTRICT HAS LONG BEEN REGARDED AS A PUBLIC AND GOVERNMENTAL AGENCY OF THE STATE FOR PUBLIC PURPOSES.

In *People v. Selma Irr. Dist.*, 98 Cal. 206, 208, the Court said:

"The defendant is a public corporation, organized under a general law of the state enacted by the legislature for the purpose of promoting the general welfare."

In the case of *Quint v. Hoffman,* 103 Cal. 506, 507, the Court said:

"* * * An irrigation district of this character is a public corporation formed under a general

law and its object is the promotion of the general welfare."

In *Miller & Lux v. Board of Supervisors,* 189 Cal. 254, 263, the Court said:

> "* * * In the opinion in the Madera District case the irrigation district was treated as a public corporation to be invested with certain political duties to be exercised in behalf of the state."

In *Jackson & Perkins Co. v. Byron-Bethany Irr. Dist.,* 136 Cal. App. 375, 381 (hearing by Supreme Court denied), it is stated:

> "It is conceded by both sides that the defendant district is a public corporation and as such an agency of the state."

In *Crow Creek Irr. Dist. v. Crittenden* (Mont.), 227 Pac. 63, 64, the Court said:

> "* * * An irrigation district is a public corporation organized for the government of a portion of the state and for the promotion of the public welfare."

In *Western Assurance Co. v. Sacramento & San Joaquin Drainage Dist.,* 72 Cal. App. 68, 76, it is stated:

> "It has been uniformly held in this state, as we have seen, that irrigation districts, formed and organized under the general laws of the state or by special legislative acts, are governmental agencies of the state * * *"

In *Fallbrook Irr. Dist. v. Bradley,* 164 U. S. 112, 17 S. Ct. 56, 69, said:

"The formation of one of these irrigation districts amounts to the creation of a public corporation and their officers are public officers."

At page 64 the Court further said:

"To irrigate and thus to bring into possible cultivation, these large masses of otherwise worthless land would seem to be a public purpose, and a matter of public interest, not confined to the landowners, or even to any one section of the state. The fact that the use of the water is limited to the landowner is not therefore a fatal objection to this legislation. It is not essential that the entire community, or even any considerable portion thereof, should directly enjoy or participate in an improvement in order to constitute a public use."

In *Glenn-Colusa Irrigation District v. Ohrt,* 31 C. A. (2d) 619,[1] the Court declared:

"We are of the opinion the irrigation district is a branch and agency of the state government and that the grain in question, as the property of that district, is exempt from taxation. The courts of this state have repeatedly held that irrigation districts organized pursuant to the California Irrigation District Act are political subdivisions and agencies of the state."

In *Reclamation Dist. No. 551 v. County of Sacramento,* 134 Cal. 477, 66 Pac. 668, the Supreme Court in its opinion said:

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[1]This case is a reaffirmation of the decision in the case of *Turlock Irrigation District v. White.*

"It is not necessary to hold this property, thus acquired, to be the property of a municipal corporation, in order to make it exempt from taxation. It would be sufficient to hold that it is public property of the state, within the meaning of the constitution. The whole scheme of reclamation originates with the state, and is carried to a conclusion by agents of the state, the district as we have already seen being a public agency, in furtherance of public policy. The property mentioned in Sec. 3471 of the Political Code is public property, acquired by the agents of the state, for state purposes, and we think is exempt from taxation, as such."

In the case of *El Camino Irrigation District v. El Camino Land Corp.*, 12 Cal. (2d) 378, 85 Pac. (2d) 123, the Supreme Court said, speaking of the nature of irrigation districts:

"* * * state agencies such as irrigation or reclamation districts * * * are agencies of the state whose functions are considered exclusively governmental; their property is state owned, held only for governmental purposes; they own no land in the proprietary sense, * * *"

FOURTH POINT: A CALIFORNIA IRRIGATION DISTRICT IS A TRUSTEE FOR THE PUBLIC PURPOSES OF THE ACT AND FOR ITS LANDOWNERS, TAXPAYERS AND BONDHOLDERS.

The statute which provides for the organization of an irrigation district plainly shows that the intention is that certain land within a given area shall be organized for certain public purposes into an irrigation

district. The process of this organization is by a petition to the Board of Supervisors of the county, the people in the area vote upon the question of organization, there are public hearings, reports by the State Department of Public Works. The irrigation district thus formed has powers of taxation and to create an indebtedness by bond issues.[2] As a consequence the landowners and taxpayers within the district have a distinct personal and property interest in the district and in a sense have granted to the irrigation district certain powers of taxation and of incurring indebtedness through the governing board of the district. Thus they are interested in all matters that affect the resources of the district itself. The bondholders also have acquired their bonds in reliance upon certain statutes and decisions and amongst other things have relied upon the non-taxability of the lands of this public agency.

As further showing that the district acts in a measure as a trustee for these various parties, we refer to the dissolution statute, Section 27757 of the Water Code of the State of California, which provides that upon dissolution of an irrigation district "All funds remaining after all outstanding indebtedness has been paid shall be apportioned and paid to the assessment payers according to the last equalized assessment of the district."

It will be observed that the statute does not provide that the residue of funds resulting from a disso-

[2]See extracts from Statute, Appendix A.

lution be paid into the state treasury, but provides that it be paid to the landowners themselves.

Section 22437 of the Water Code of the State of California reads in part as follows:

> "Title to all property acquired by a district is held in trust for its uses and purposes."

This section is based on Stats. 1897, Chapter 189, Section 29, the first and second sentences as amended by Stats. 1909, Chapter 698 and Stats. 1935, Chapter 113.

This section has been interpreted several times by the California Supreme Court.

In the case of *Provident Land Corporation v. Zumwalt,* 12 Cal. (2d) 365, at page 374 the Court was discussing Section 29 of the California Irrigation District Act which is the above provision in the Water Code, and said:

> "* * * section 29 of the act, which provides that property acquired by the district under its provision shall be held 'in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act'. This express statement that the lands are impressed with a trust must be kept in mind in considering the amendment to section 47 purporting to give the district the rights of a private purchaser. Reading the two sections together, the only reasonable interpretation is that the district may freely transfer, lease or otherwise deal with the lands, insofar as its power is concerned, but the lands remain in trust and the district exercises its powers, however broad, as a

trustee. Once it is made clear that the lands are held in trust, it necessarily follows that their proceeds, whether by sale or lease, are likewise subject to trust."

The Court at page 375 stated further:

"It next becomes necessary to determine whether the payment of the bondholders is one of these purposes. * * * But laying aside quibbles as to the exact meaning of the phrase 'uses and purposes', it seems clear that if a district is to be created and to function on borrowed money, repayment of the money is not a wholly immaterial and foreign objective * * * Among other purposes of the act, therefore, is the repayment of the bondholders of the district, and it follows that this is one of the purposes for which the trust money is held."

See also *Clough v. Compton-Delevan Irrigation District,* 12 Cal. (2d) 385.

In *Hershey v. Cole,* 130 Cal. App. 683, at page 687 the Court, considering a matter pertaining to bonds of a reclamation district of the State of California, which is a district in general character similar to an irrigation district, held:

"The premises laid down by the respondent that there is no contract between the landowners of Reclamation District No. 1600 and the state, and also that there is no contract between the purchasers of the bonds issued by said district and the state, we think absolutely correct, but the conclusions drawn therefrom that there is no contract or quasi contract in legal effect between the landowners of the district and the purchasers of

bonds of the district does not appear to be supported either in principle or by the authorities."

Respondents in their reply in the instant case concede that petitioners acquired their property for the benefit of its inhabitants, saying in their reply (R. 20): "The agency acquires for the benefit of its inhabitants or the property within its boundaries property which lies outside its territory." Saying also: "There is no reason why the persons within the agencies who receive the benefits of its activities should receive aid by way of tax exemption of its property at the expense of the taxpayers in the outside area."

FIFTH POINT: THE ISSUES IN THE INSTANT CASE ARE RES JUDICATA.

The decision of the California Supreme Court in the case of *Turlock Irrigation District v. White,* 186 Cal. 183, 198 Pac. 1060 is *res judicata* of the issue of taxation and interpretation of Article XIII, Section 1 of the California Constitution and the Supreme Court of California was powerless in its judicial decision either in the case of the *Rock Creek Water District v. County of Calaveras,* 29 Cal. (2d) 1, 172 Pac. (2d) 863 or in the instant case to avoid or set aside the effect of that decision. The only way in which the effect of the decision in the case of *Turlock Irrigation District v. White* could have been changed was by constitutional amendment which is the only legislative act which could have affected the provision in question.

Article XIII, Section 1 of the California Constitution reads as follows:

"All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word 'property', as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation; and further provided, that property used for free public libraries and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county, or municipal corporation within this state shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county, or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation; provided, that no improvements of any character whatever constructed by any county, city and county or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county, or municipal corporation, not exempt from taxation,

shall be assessed by the assessor of the county, city and county, or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and adjustment by the state board of equalization. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state."

The answer of the respondents in this case admits (R. 16) that they were by virtue ot the decision in the *Turlock Irrigation District v. White* case permanently enjoined from levying taxes upon the lands belonging to the petitioners. They relied, however, upon the decision in the case of *Rock Creek Water District v. County of Calaveras,* supra.

The rule of *res judicata* therefore is a pertinent question here. In the *Turlock Irrigation District v. White* case the California Supreme Court construed the above provision of the California Constitution and stated that the nature of an irrigation district has been a matter of judicial interpretation and that it has been held that such a corporation is not a municipal corporation and to this effect cited the case of *Fallbrook Irrigation District v. Bradley,* 164 U. S. 122, 17 S. Ct. 56, and further held:

"To the contrary, such exemption existed because of the express exemption of the property of 'the state' of contained in that section and because the implications in favor of the exemption of public property.

The Court further saying:

> "It is clear that irrigation districts were not made taxable by the exception contained in the amendment in question."

The decision in the case of *Turlock Irrigation District v. White,* 186 Cal. 183, 198 P. 1060 must be deemed *res judicata* of the issues here. In the case of *Tait, Collector v. Western Maryland Railway Co.,* 289 U. S. 620, 53 S. Ct. 706, the Supreme Court of the United States held:

> "This court has repeatedly applied the doctrine of res judicata in actions concerning state taxes, holding the parties concluded in a suit for one year's tax as to the right or question adjudicated by a former judgment respecting the tax of an earlier year * * * The public policy upon which the rule is founded has been said to apply with equal force to the sovereign's demand and the claims of private citizens. Alteration of the law in this respect is a matter for the lawmaking body rather than the courts."

In *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 60 S. Ct. 317, it is said:

> "Res Judicata may be pleaded as a bar not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, but also as respects any other available matter which might have been presented to that end."

Here the unconstitutionality of a statute was held not to affect the rule of *res judicata.*

In *Deposit Bank v. Board of Councilmen of Frankfort,* 191 U. S. 499, 24 S. Ct. 154, it said:

"Again it is urged that the taxes herein involved are those for different years than were under consideration and covered by the decree of the Federal Court relied upon. The vice of this argument consists in assuming that the taxes for specific years were alone involved and covered by the decree of the court. The controversy was as to the force and effect of the Hewitt law as a contract; not for one year, but for all years; not for one assessment, but for all assessments of taxes upon certain property of the bank."

"In the course of the opinion, Mr. Justice White said:

" 'The proposition that because a suit for a tax of one year is a different demand from the suit for a tax for another, therefore res judicata cannot apply, whilst admitting in form the principle of the things adjudged, in reality substantially denies and destroys it. The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies.

" 'It follows, then, that the mere fact that the demand in this case is for a tax for one year, and the demands in the adjudged cases were for taxes for other years, does not prevent the operation of the thing adjudged, if, in the prior cases, the question of exemption was necessarily pre-

sented and determined upon identically the same facts upon which the right of exemption is now claimed.' "

City of New Orleans v. Citizen's Bank of Louisiana, 167 U. S. 371, 17 S. Ct. 905:

"A judgment enjoining the collection of a tax against a bank for a particular year on the ground of a character exemption is conclusive as to the right to the exemption for future years, where it is claimed upon identically the same facts."

SIXTH POINT: A JUDGMENT IS A CONTRACT AND PROPERTY.

In *Jones v. Union Oil Co. of California,* 218 Cal. 775, 25 Pac. (2d) 5 (1933), the Court declared:

"It is well established in this state that a judgment is a contract as contemplated by the constitution (citations). One of the incidents of the judgment contract under section 671 of the Code of Civil Procedure prior to the amendment thereof was the lien thereby created by operation of law. (citations) The lien thus created was inseparably connected with the judgment and the Legislature had no power to impair it. (citations) Considered in the sense of a remedy for the enforcement of the judgment, such remedy was nevertheless a part of the obligation of the contract and subject to constitutional protection against impairment."

In *Scarborough v. Dugan,* 10 Cal. 305, at 309, the Court declared in considering a judgment rendered in a foreign jurisdiction:

"Can the Legislature, under the pretense or with the object of regulating the remedy, deny all remedy, and thus destroy the contract? for it is well settled that a judgment, in this sense of the Constitution, is a contract. It is not disputed that the law of the forum can regulate the remedy, which, generally speaking, forms no part of the contract, and thus is not within the constitutional interdict. But it is just as well settled that the Legislature has no right so to regulate the remedy as that it shall destroy the contract by denying all means of enforcement. A right without a remedy is, practically, no obligation at all. A contract is just as much impaired by a prohibition to sue upon it, as it is by direct legislative action declaring it void."

We are not of course talking about impairment of contract, but we are talking about the fact that a judgment is a contract and so creates a property interest and that the Fourteenth Amendment to the Constitution of the United States prohibits any state to deprive any person of any property without due process of law and to deny to persons within its jurisdiction the equal protection of the laws.

In *Sovereign Camp W. O. W. v. Gillespie,* (Ark.) 1937, 87 Fed. (2d) 944, certiorari denied; *Gillespie v. Sovereign Camp W. O. W.,* 1937, 57 S. Ct. 925, 301 U. S. 698, 81 L. Ed. 1353, certiorari denied *Yell County, Ark. v. Gillespie,* 57 S. Ct. 925, 301 U. S. 698, 81 L. Ed. 1353, it was held where county refunding bonds had been issued on faith of a statute and a tax had been levied and subsequent action of a quorum

Court in levying a lesser tax, redetermination of county's indebtedness was void as depriving the original bondholders of their security without due process. This action was also held to be legislative in character and void as impairing the obligation of contract.

SEVENTH POINT: THE DECISION IN THE ROCK CREEK CASE HAS NO FORCE IN THIS CONTROVERSY.

In the case of *Rock Creek Water Dist. v. County of Calaveras,* 29 Cal. (2d) 1, 172 Pac. (2d) 863 the Rock Creek Water District, organized under the California Water District Act, Stats. 1913, page 815, 3 Deering's General Laws Act 9125 sought exemption from taxation under Section 1 of Article XIII of the Constitution of the State of California. The Court held that a water district was a municipal corporation within the terms of the constitution and therefore not exempt. The Court says: "Therefore the Turlock and Laguna Beach cases are overruled".

Now the Court could overrule that case insofar as it applied to a water district and possibly the case would be a good citation of authority pertaining to some other irrigation district, but in the instant case the decision in the *Turlock Irrigation District v. White,* since it specifically adjudges matters pertaining to petitioners in this case cannot by such inference and mere dictum be overruled.

The decision did not even relate to an irrigation district. (See opinion in cited case itself and R. 5).

Neither the petitioners here nor their property were before the Court under consideration.[3] The former judgment in *Turlock Irrigation District v. White* could not be thus annulled.

EIGHTH POINT: A FEDERAL QUESTION WAS SPECIALLY SET UP AND CLAIMED BY THE PETITIONERS UNDER THE CONSTITUTION IN THE PROCEEDING IN THE STATE COURT.

The writ of mandamus was sought below on two general grounds. The main ground of the petition was "that the decision in said case of *Turlock Irrigation District v. White aforesaid* effected a rule of property and became a grant and contract conveying the right of immunity from such assessment and taxation and in reliance upon the said decision the said Turlock Irrigation District and the said Modesto Irrigation District have acquired property of an extensive nature and made financial and property commitments and undertaken obligations" (R. 4). It was also claimed that the "officers of the county of Tuolumne in levying said assessment and in undertaking to carry out the usual tax process upon said property are in contempt of Court and are in violation of the

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[3]The *Rock Creek* case as pointed out to the California Supreme Court was a case "between two relatively minor institutions, and none of the parties nor" the Court "called upon the California Irrigation Districts Association, an association of the more than one hundred irrigation districts" in the state "who have always been represented in cases of this type before" that Court "and permitted to be heard on vital issues affecting irrigation districts" (R. 13).

statutory and contract rights under the laws and constitution of this state and the United States." (R. 4).

In addition to these claims made in the petition below the petitioners further and specially set up and claimed the petitioners' title, right, privilege and immunity under the constitution to which they were entitled, in paragraph XIV of the petition (R. 5). There petitioners alleged the assessment of the tax had been made in reliance upon the previous decision of the California Supreme Court in the case of *Rock Creek Water District v. County of Calaveras,* 29 Cal. (2d) 1, 172 Pac. (2d) 863. Petitioners claimed that this decision did not apply to irrigation districts and insofar as it purports to do so is mere dictum and petitioners alleged "and that if the said decision was so intended to apply it violates the constitutional privileges and immunities of the petitioners and of the taxpayers and landowners of said irrigation districts, and in particular violates the provisions of Article I, Section 10 and Section 1 of the Fourteenth Amendment of the Constitution of the United States, and that the said levy of taxes violates the said provisions and takes the property of petitioners without due process of law, violates the provisions prohibiting the impairment of the obligation of contracts, and the provisions thereof prohibiting the denial of equal protection of the laws, and prohibiting the enforcement of laws abridging the privileges and immunities of citizens of the United States, not only for the reason that said petitioners are not municipal corporations as aforesaid, but because of the matters hereinabove set forth relating to

prior adjudication of said rights of the petitioners" (R. 5).

Inasmuch as no irrigation district appeared in that case, and what is more to the point, petitioners were not parties to the case, they were in no wise bound by the decision. Insofar as the decision in the *Rock Creek v. Calaveras County* case affects the petitioners it is void for want of due process in that case. *Metropolitan Life Insurance Co. v. Welch,* 202 Cal. 312, 315. The petitioners were in no way bound by the Rock Creek decision and the instant case brought by them was the first instance in which they could have their rights and titles under the former *Turlock Irrigation District v. White* case enforced insofar as the 1947 tax was concerned.

This was the main ground of the petition. A secondary ground with which this Court is not concerned is that the construction of the constitutional provisions of the Constitution of California, Article XIII, Section 1, was incorrect in the *Rock Creek* case, supra.

In the Points and Authorities submitted by the petitioners in the Court below they (petitioners here) relied upon the case of *Turlock Irrigation District v. White* and claimed that the decision must be deemed *res judicata,* cited the case of this Court of *Tait, Collector v. Western Maryland Ry Co.,* 289 U. S. 620, 53 S. Ct. 706 (R. 12, 13) and asked that the question of *res judicata* be determined.

The respondents in their reply specifically set up the defense that the decision in the *Rock Creek* case

definitely overrules the decision in the case of *Turlock Irrigation District v. White,* and that they were therefore justified in levying the assessment for the tax (R. 19).

It clearly appears that a Federal question was before the Court, decided adversely to the petitioners and should we submit be reviewed by this Honorable Court.

CONCLUSION.

It is submitted that a writ of certiorari should be issued to the Supreme Court of the State of California in this case, the judgment of the Court below reversed and the Court directed to issue a writ of mandamus as prayed for.

Dated, February 6, 1948.

W. COBURN COOK,
Counsel for Petitioners.

VERNON F. GANT,
Of Counsel.

(Appendix A Follows.)

Appendix A

Containing extracts from Water Code of the State of California adopted May 13, 1943, Cal. Stats. 1943, Ch. 368 (based in part upon "the California Irrigation District Act," Cal. Stats. 1897, Ch. 189 as amended).

Formation

Water Code:

Section 20700: A majority in number of the holders of title to land susceptible of irrigation from a common source and by the same system of works, including pumping from subsurface or other water, who are also the holders of title to a majority in value of the land may propose the formation of a district under the provisions of this division; or the formation of the district may be proposed by not less than 500 petitioners, each of whom is an elector residing in the proposed district or the holder of title to land therein and which petitioners include the holders of title to not less than 20 per cent in value of the land included within the proposed district.

Section 20800: The formation petition shall be presented to the board of supervisors of the principal county.

Section 20820: On or before the day on which the petition is presented to the board of supervisors, a copy of the petition shall be filed in the office of the Department of Public Works.

Section 20822: Upon receiving a copy of the resolution the department shall make such preliminary investigation as may be practicable to determine the feasibility of the proposed project.

Section 20823: The department shall report in writing to the board of supervisors as soon as practicable, but at all events within 90 days from the date of the adoption of the preliminary formation resolution, except that upon receiving a written request from the department the board of supervisors may before the expiration of the 90 days grant to the department not more than 90 days additional time in which to make the report.

Section 20847: At the conclusion of the final hearing on the petition the board of supervisors shall make an order containing all of the following:

(a) Reaffirmance, when it is consistent with its conclusions of the sufficiency of the petition and of the notice of the preliminary hearing.

(b) Recital that a report on the proposed district has been made by the department if it was in fact made, and if that be so, that it is on file in the records of the board.

(c) Description of the land as determined by the board.

(d) Name for the proposed district, which shall contain "Irrigation District."

Section 20960: If upon the canvass of the formation election it appears that a majority of all the

votes cast are "Irrigation District—Yes," the board of supervisors shall by an order entered on its minutes declare the territory formed as a district under the name designated for it.

Powers and Purposes

Section 22075: A district may do any act necessary to furnish sufficient water in the district for any beneficial use.

Section 22076: A district may do any act in order to put to any beneficial use any water under its control.

Section 22077: A district may deliver water for fire protection purposes.

Section 22095: A district may provide for any and all drainage made necessary by the irrigation provided for by the district.

Section 22115: Any district heretofore or hereafter formed may purchase or lease electric power from any agency or entity, public or private, and may provide for the acquisition, operation, leasing and control of plants for the generation, transmission, distribution, sale and lease of electric power, including sale to municipalities, public utility districts, or persons.

Section 22437: The title to all property acquired by a district is held in trust for its uses and purposes. The district may hold, use, acquire, manage, sell or lease the property as provided in this division.